

### **REMARKS**

The above-identified application has been considered in view of the Final Office Action that was mailed on May 28, 2008. Claims 11-15 and 22-29 are currently pending. By the present Amendment, Applicant has amended independent claims 11, 25, and 28. Applicant respectfully submits that the amendments to independent claims 11, 25, and 28 incorporate no new matter and are fully supported by the specification. In view of these amendments, and the following remarks and arguments, Applicant respectfully submits that the pending claims are allowable over the references of record, and accordingly, Applicant respectfully requests reconsideration and allowance of the above-identified application.

In the Final Office Action, claims 11-15 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4-6, and 11 of co-pending Application No. 10/729,634, over claims 1-4 and 7 of co-pending Application No. 10/743,192, and over claims 1 and 15-21 of co-pending Application No. 10/729,768. In response to each of these provisional double-patenting rejections, as previously stated in the Amendment dated February 1, 2008 that was submitted in response to the Office Action that was mailed on October 29, 2007, Applicant will file a suitable terminal disclaimer upon the indication that claims 11-15 are otherwise allowable.

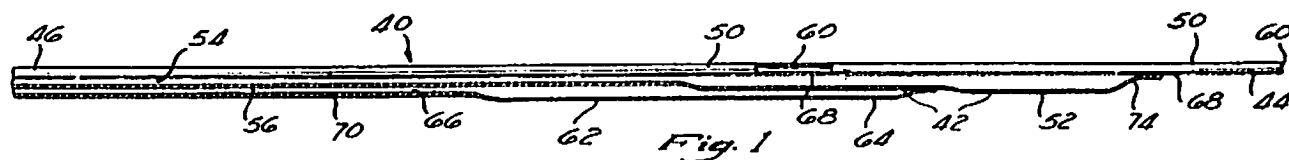
Claims 11-15 and 22-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,071,406 to Jang (hereinafter "Jang") in view of U.S. Patent No. 4,295,464 to Shihata (hereinafter "Shihata"). Applicant respectfully submits, however, that the combination of Jang and Shihata fails to suggest each and every element recited in claims 11-15 and 22-29.

As amended, independent claim 11 recites a retractor that includes a shaft with at least one flexible portion and a plurality of inflatable bladders, wherein at least one of the inflatable bladders is disposed about the at least one flexible portion and configured to “transition from an uninflated state to an inflated state, whereupon the at least one flexible portion of the shaft is rendered rigid upon inflation of the at least one inflatable bladder.”

As amended, independent claim 25 recites a retractor that includes a shaft with at least one flexible portion and a plurality of inflatable bladders “configured to transition from an uninflated state to an inflated state, whereupon the at least one flexible portion of the shaft is rendered rigid upon inflation of the at least one inflatable bladder.”

As amended, independent claim 28 recites a retractor that includes “a shaft adapted to transition from a first condition, in which the shaft includes at least one flexible portion, to a second condition, in which the at least one flexible portion is rendered rigid” and a plurality of bladders that are “selectively inflatable for transitioning a portion of the shaft from the first condition to the second condition.”

Jang relates to an angioplasty catheter 40 including a flexible shaft 50 and at least one balloon 42 positioned at a distal end 44 of the shaft 50, as seen below in FIG. 1. (See col. 10, lines 23-25, 35-37).



In the Final Office Action, the Examiner argued that the inflatable bladder 42 is configured to cause a flexible portion of the shaft 50 to become more rigid upon inflation. The Examiner acknowledged that Jang fails to disclose a cannula having a passage which receives the

shaft to deploy the bladder at a target site in tissue, and relied upon Shihata for disclosure of that concept. Applicant respectfully submits, however, that the Examiner's characterization of Jang is erroneous.

Jang discloses that the material comprising the catheter "must be flexible" and resilient so that the catheter can negotiate tortuous and sometimes irregular arteries. (See col. 4, line 67 – col. 5, line 3). Additionally, Jang states that flexibility of the distal end 44 of the catheter 40, about which the bladder 42 is positioned, is extremely important, as too much stiffness or rigidity will makes insertion of the catheter 40 more difficult. (See col. 4, lines 10-12). As such, the catheter 40 described in Jang is structured and designed to provide increased flexibility. (See col. 4, lines 32-40).

The Examiner's contention that the shaft 50 becomes more rigid upon inflation of the bladder 42 is contrary to Jang's description of the catheter 40. Jang is silent as to the effect inflation of the bladder 42 has upon the shaft 50, which suggests that the shaft 50 undergoes no change, thus remaining flexible. In fact, rigidifying the shaft 50, either by inflation of the bladder 42 or in any other manner, would substantially inhibit, if not completely prevent the catheter 50 from negotiating the artery through which it is inserted during use, thus frustrating the purpose of the catheter 50.

Accordingly, Applicant respectfully submits that Jang fails to disclose or suggest a shaft with at least one flexible portion and a plurality of inflatable bladders, wherein at least one of the inflatable bladders is disposed about the at least one flexible portion and is configured to "transition from an uninflated state to an inflated state, whereupon the at least one flexible portion of the shaft is rendered rigid upon inflation of the at least one inflatable bladder" as recited in amended independent claim 11, or a shaft including at least one flexible portion and a

plurality of inflatable bladders “configured to transition from an uninflated state to an inflated state, whereupon the at least one flexible portion of the shaft is rendered rigid upon inflation of the at least one inflatable bladder” as recited in amended independent claim 25, or “a shaft adapted to transition from a first condition, in which the shaft includes at least one flexible portion, to a second condition, in which the at least one flexible portion is rendered rigid” as recited in amended independent claim 28. Including the cannula purportedly described in Shihata would fail to cure this deficiency.

For at least these reasons, *inter alia*, Applicant respectfully submits that the combination of Jung and Shihata fails to disclose or suggest each and every element recited in amended independent claims 11, 25, and 28, and therefore, that amended independent claims 11, 25, and 28 are allowable over Jung in view of Shihata under 35 U.S.C. § 103(a). As claims 12-15, 22-24, and 26-29 depend either directly or indirectly from amended independent claims 11, 25, and 28 and include each element recited therein, for at least the reasons that amended independent claims 11, 25, and 28 are allowable over Jung in view of Shihata under 35 U.S.C. § 103(a), *inter alia*, Applicant respectfully submits that claims 12-15, 22-24, and 26-29 are also allowable over Jung in view of Shihata under 35 U.S.C. § 103(a).

In view of the foregoing, Applicant respectfully submits claims 11-15 and 22-29 are in condition for allowance.

Should the Examiner believe that a telephone or personal interview may facilitate resolution of any remaining matters, the Examiner is respectfully requested to contact the Applicant's undersigned attorney at the telephone number indicated below.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550 therefor

Respectfully submitted,



Dana A. Brussel  
Reg. No. 45,717  
Attorney for Applicant

**CARTER, DELUCA, FARRELL & SCHMIDT, LLP**  
445 Broad Hollow Road - Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5713  
Fax: (631) 501-3526

**CORRESPONDENCE ADDRESS:**

Chief Patent Counsel  
Covidien  
60 Middletown Avenue  
North Haven, Connecticut 06473